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IN THE  
 UNITED STATES CIRCUIT  
 COURT OF APPEALS  
 FOR THE NINTH CIRCUIT

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No. 7819

COMMISSIONER OF INTERNAL REVENUE,  
*Petitioner,*

v.

ALICE H. ELDRIDGE,  
*Respondent.*

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On Petition for Review of Decision of the United States  
 Board of Tax Appeals

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BRIEF FOR THE RESPONDENT

THOMAS N. FOWLER,  
 Attorney for Respondent.

FILED

SEP 7 - 1933

PAUL P. D'AMICO



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## QUESTION PRESENTED

Taxpayer's husband in December, 1929 owned certain stock the value of which had very materially declined during the period of his ownership. It is admitted that all of the said property was the community property of the taxpayer's husband, A. S. Eldridge and taxpayer. In December, 1929, taxpayer's husband intended to sell the securities for the purpose of establishing a deductible loss and further intended to advance the proceeds of the sale to the Eldridge Buick Co, a corporation. The Eldridge Buick Co was solely owned by the said A. S. Eldridge (taxpayer's husband) except for qualifying shares held by members of his family. It had been the custom of A. S. Eldridge for many years to have the Eldridge Buick Co indebted to him. At the close of 1929 it was found that the Eldridge Buick Co. had had substantial losses during that year and that taxpayer was indebted to Eldridge Buick Co instead of having the corporation indebted to him. Eldridge desired to reverse that condition and decided to sell the securities upon the open market and advance the proceeds to the Eldridge Buick Co. The sale of the securities was made by Eldridge direct to the corporation at the then market value for the purpose of assisting the corporation to

reflect a credit balance in Eldridge's personal account and for the further purpose of establishing a deductible loss. The certificates of stock were delivered and transferred to the name of the Eldridge Buick Co and have ever since remained in the possession and control of the corporation. The consideration was paid by the corporation by crediting Eldridge's personal account.

Was the sale by Eldridge to the solely owned and controlled corporation sufficient to justify the claimed deduction from gross income under Section 23 (e) (2) of the Revenue Act of 1928?

#### STATEMENT AND ARGUMENT

This case and the case of A. S. Eldridge above referred to (United States Circuit Court of Appeals for the Ninth Circuit, No. 7818) were heard together by the Board of Tax Appeals. The Findings of Fact and the Opinion of the court cover both cases (R 13-20). The Statement of Evidence set forth in the record in the A. S. Eldridge case applies equally to this case (R 31). The parties heretofore have stipulated that that statement of evidence may be deemed to be incorporated in the record in this case (R 31, 32).

The parties heretofore have stipulated in this case "That they shall abide and be governed by the decision and proceedings in the case of A. S. Eldridge." (R 32).

Reference is hereby made to all of the arguments and authorities set forth in detail in the case of A. S. Eldridge and the same is made a part hereof as if incorporated herein in full.

We deem further discussion of the legal principles involved in this case to be unnecessary. We respectfully submit this case on the argument contained in the brief in the A. S. Eldridge case and agree to abide by the results in that case in accordance with the stipulation herein.

Respectfully submitted,

THOMAS N. FOWLER,

Attorney for Respondent. <sup>ε 4</sup>

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